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In re Application of
TAKAGI *et al*
U.S. Application No.: 10/574,470
PCT No.: PCT/JP2005/000155
Int. Filing Date: 07 January 2005
Priority Date: 07 January 2004
Attorney Docket No.: 12480000175US
For: PRODUCING PROCESS OF STERILE
PLANTS OBTAINED BY THE PROCESS
AND USE OF THE PLANTS

DECISION

This is a decision on the "Petition under 37 C.F.R. § 1.181(a) to Withdraw Holding of Abandonment" filed on 30 June 2009. No fee is required.

BACKGROUND

On 31 March 2006, applicants filed papers to enter the national stage of PCT/JP2005/000155 which was accompanied by, *inter alia*, a CRF sequence listing diskette.

On 17 April 2006, the STIC Biotechnology Branch tested the CRF sequence listing diskette and found that it could not be accepted as it contained several errors.

On 05 July 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a declaration and CRF sequence listing diskette was required. A Raw Sequence Listing Error Report accompanied the notice. A two-month time period for response was set with extensions under 37 CFR 1.136(a).

On 29 August 2006, applicants filed a response which included a declaration and a CRF sequence listing diskette.

On 30 July 2007, the DO/EO/US mailed a Notification of a Defective Response (Form PCT/DO/EO/916) indicating that the response filed 29 August 2006 was received but that a CRF sequence listing diskette was still required.

On 29 August 2007, applicants filed a CRF sequence listing diskette.

On 31 August 2007, an email to applicants from Ms. Anne-Marie Corrigan of the

STIC Systems Branch of the USPTO was sent. Applicants were informed that the CRF sequence listing diskette filed 29 August 2006 contained an error.

On 04 September 2007, applicants filed another CRF sequence listing diskette.

On 14 May 2009, the DO/EO/US mailed a Notice of Abandonment Under 37 CFR 1.53(f) or (g) indicating that applicants failed to respond to the Form PCT/DO/EO/905 mailed 05 July 2006.

On 30 June 2009, applicants submitted the instant petition to withdraw the holding of abandonment which was accompanied by, *inter alia*, exhibits A - E.

DISCUSSION

The Form PCT/DO/EO/916 mailed 30 July 2007 indicated that applicants failed to provide a CRF sequence listing diskette with the response mailed 29 August 2006.

That was not the case. The CRF Sequence Listing CD filed 29 August 2006 was received in the USPTO; however, it was placed in the "artifact" folder and not retrieved until 30 August 2007. See Corrigan Email 31 August 2007 (Exhibit C). One error was found.

Applicants resubmitted the CRF sequence listing diskette on 04 September 2007. This diskette was accepted.

The Form PCT/DO/EO/916 mailed 30 July 2007 contained erroneous information and is VACATED.

Applicants did provide a CRF sequence listing diskette with their response on 29 August 2006.

Applicants were entitled to a new Form PCT/DO/EO/916 on 31 August 2007 after the original CRF sequence listing diskette was retrieved and found to contain an error. This would have provided an additional month for applicants to fix any error.

Therefore, applicants response on 04 September 2007 would have been timely.

DECISION

Applicants' petition to withdraw the holding of abandonment is GRANTED.

The Notice of Abandonment Under 37 CFR 1.53(f) or (g) mailed 14 May 2009 is hereby VACATED.

This application is being forwarded to the Office of Patent Application Processing
for continued processing.



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